

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 1761
Examiner : Thuy Tran Lien
Applicants : Brian K. Doyle et al.
Appln. No. : 10/025,403
Filing Date : December 19, 2001
Confirmation No. : 4925
For : **COATED FOOD PRODUCTS MADE FROM SHAPED DOUGH
SUBSTRATES AND METHOD OF PREPARING SAME**

DECLARATION OF JOHN F. STEVENS

I, John F. Stevens, do hereby declare as follows:

1. I am the Vice President for Research and Development for Advanced Food Technologies, assignee of the present patent application. I graduated from Cornell University with a Food Science Degree in 1970. I have had over 30 years experience in the food science industry. I have had extensive experience specifically in the food coatings area for 14 years, since 1989.

2. From 1989 to 1991, I was the Research and Development Manager for Universal Foods Corporation, where I directed coated french fry developments which resulted in 60 million dollars in additional annual sales for the company. I developed the first clear coat French fry, now having estimated markets sales of over 1 billion pounds per year.

3. From 1991 to 1994, I was Director of Technical Services for McCain Foods, Inc. I directed all of the potato food coatings research for McCain Foods, Inc., including the development of marketed coatings.

4. From 1994-1996, I was the Research Manager for Miles Willard Company, directing all frozen and non-snack dehydrated potato development, including the development of a patented clear coat French fry product.

5. From 1996-1999, I was the Director of Northwest Region Technical Services for Newly Weds Foods, Inc. I established, staffed and directed all formula, process,

specification, and commercialization of seasoned and clear coat French fry batters for all French fry processors and chain accounts throughout the United States. I developed and commercialized a signature clear coat french fry for a major processor and for a major national chain account.

6. From 1999 to date, I have served as the Vice President of Research and Development for Advanced Food Technologies. A copy of my resume is attached hereto as Exhibit 1.

7. I am one of the named inventors of U.S. Patent Application Serial No. 10/025,403.

8. I have reviewed the Office Action mailed December 13, 2004, in United States Patent Application Serial No. 10/025,403 and the primary references cited therein, U.S. Patent Nos. 4,109,024 to Cremer, 5,928,693 to Friedman et al. and 4,487,786 to Junge.

9. The term "clear coat," which is a generic class of coatings of which Applicants' present coating is a species thereof, is a widely recognized industry term referring to coatings, which due to their makeup, result in a coating on a french fry that is substantially clear after cooking. This is in contrast to a tempura batter or spicy batter which is opaque.

10. I have also reviewed commonly owned United States Application Serial Nos. 60/180,666 and 60/234,153, which were incorporated by reference in the originally filed specification and the Amendments to the Specification included in this Response. The Amendments to the Specification expressly contain the same material incorporated by reference in the originally filed application and do not add new matter.

11. I understand that the Examiner asserts that claims 1 and 20 of the application would have been obvious in view of Junge.

12. The abstract of the Junge reference specifically states that the starch slurry is applied to the outer surface of a frozen food product.

13. The "Summary of the Invention" of the '786 patent also states:

The starch slurry is applied to the already frozen food product, whereupon the product is refrozen and preferably coated with a high melting point lipid.

Throughout the remainder of the Junge patent are references to the application of the starch slurry to a previously frozen food product. The example at column 5 states that "[a]fter freezing at 0° F., the frozen pizza envelopes were dipped for 2-3 seconds in the enrobing slurry. . . The coated products were removed from the slurry and frozen to 14° F."

14. The characteristics of a starch slurry applied to a frozen dough which is subsequently refrozen and then fried in oil are different from a starch slurry applied to a pliable unfrozen dough which is subsequently fried in oil and then frozen.

15. The '786 patent is directed toward the use of a high amylose starch enrobing slurry including a starch material of not less than 50% by weight of amylose, wheat flour and edible acid, which is used to coat an already frozen food product. The starch slurry of the '786 patent is primarily designed to provide a coating to protect a frozen product from oxidation during storage.

16. In my opinion, the frozen dough of the '786 patent would not be pliable, but rather solid and rigid, at the temperatures described in the '786 patent.

17. The starch slurry coated frozen dough is refrozen and preferably coated with a high melting point lipid. The '786 patent does not disclose application of a slurry to a pliable dough.

18. In my opinion, if the coating composition of the '786 patent was applied to a pliable dough that was not subsequently fried in oil before freezing, the coating would not set and therefore would run off the substrate whenever the product rises above freezing temperature resulting in some, if not large, portions of the product clumping together. In fact, the '786 patent at column 4, lines 45-51 states:

When exposed to temperatures above freezing, an unprotected starch coating would melt in a manner similar to ice cream. The presence of the lipid layer retards this process, and the starch coating remains intact for 15 to 20 minutes after the food product is removed from the freezer, thereby facilitating handling in a restaurant.

19. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further, these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 USC §1001, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

May 12, 2005
Date

John F. Stevens
John F. Stevens

EXHIBIT 1

JOHN STEVENS

200 Cobblestone Lane • Idaho Falls, Idaho 83404 • (208) 529-9027

OBJECTIVE

Management position in food-related product development

PROFESSIONAL SUMMARY

Director with 28 years of product management experience. Demonstrated ability to structure innovative solutions to complex problems that allow for increased profits. Proven ability to develop quality teams that motivate others to their peak performance and reduce execution time.

CAREER HISTORY

NEWLY WEDS FOODS, INC.

Idaho Falls, Idaho

1996 – 1999

DIRECTOR, NORTHWEST REGION TECHNICAL SERVICES

- Established, staffed, and directed all formula, process, specification, and commercialization of seasoned and clear coat french fry batters for all french fry processors and chain accounts throughout the United States.
- Worked directly with all french fry processors to define, develop, and implement process improvements, and introduce new and cost reduced products to their lines.
- Salvaged failing business at key customer by demonstrating technical expertise with flours, starches, seasonings, processing capability, and implementing process savings in excess of \$1,000,000 per year.
- Developed and commercialized a signature clear coat french fry for a major processor and for a major national chain account.
- Developed patent-pending process for maintaining light colored fried potato products throughout the year.

MILES WILLARD COMPANY

Idaho Falls, Idaho

1994 – 1996

RESEARCH MANAGER

- Directed all frozen and non-snack dehydrated potato development, creating 8 new product opportunities and bringing on board two new clients on a royalty-paying basis.
- Developed patented clear coat french fry product and patent-pending processes for reduced fat coated fries, and for improved chopped & formed product.

MCCAIN FOODS, INC.

Frozen Foods Division – Othello Washington

1991 – 1994

DIRECTOR, TECHNICAL SERVICES

- Directed all research, quality assurance, nutrition, specification, labeling, and internal sensory for the USA multi-plant operation.
- Commercialized signature french fry line, resulting in \$30,000,000 sales.
- Commercialized first flavored marinade french fry line valued at \$10,000,000, obtaining patent.

UNIVERSAL FOODS CORPORATION

Frozen Foods Division – Twin Falls, Idaho

1989 – 1991

R&D MANAGER, NEW PRODUCTS

- Directed coated french fry developments and internal sensory resulting in \$60,000,000 additional sales.
- Developed first clear coat french fry now having estimated market sales of over 1 billion pounds per year.
- Instituted cost reduction programs resulting in \$4,000,000 savings per year.

JOHN STEVENS

STEVENS LABORATORIES, INC.

Rochester, New York

1988 – 1989

GENERAL MANAGER

- Took over family business of food & wastewater analyses from father who was retiring. Computerized and streamlined operations.

THE PILLSBURY COMPANY

Minneapolis, Minnesota

1985 – 1988

- Directed all dehydrated potato maintenance valued at \$150,000,000.
- Created concept and development of marketed microwave potato specialty line valued at \$20,000,000.
- Headed team for the development of 12 marketed food service bakery toppings valued at \$8,000,000.
- Developed and implemented cost reduction programs amounting to more than \$1,000,000, achieving an award for outstanding cost reduction contribution.
- Developed a sulfite program that established benchmarks for the FDA and resulted in identifying the ability to significantly reduce use levels.

THE R. T. FRENCH COMPANY

(Potato Division acquired by The Pillsbury Company in 1985)
Rochester, New York / Idaho Falls, Idaho

1970 – 1985

MANAGER, FOOD SERVICE BUSINESS DEVELOPMENT

1984 – 1985

- Identified new business areas resulting in a \$10,000,000 development strategy.
- Built the food service laboratory and directed programs requiring identifying and implementing new package design / copy, resulting in increased product marketability.
- Developed and launched a new concept of potato in a pouch resulting in \$15,000,000 sales.
- Worked directly with distributorships, national account managers, brokers, and ad / creative design houses.

MANAGER, PRODUCT RESEARCH & DEVELOPMENT

1978 – 1984

- Built the research facility and directed new product and sensory programs resulting in \$32,000,000 additional retail sales per year and \$40,000,000 food service sales per year.
- Constructed and directed cost reduction programs resulting in \$6,000,000 savings.
- Oversaw development of specifications, nutrition labeling, and package design.

SUPERVISOR, TECHNICAL SERVICES

1976 – 1978

SENIOR SCIENTIST

1974 – 1976

FOOD SCIENTIST

1970 – 1974

- Responsible for the development of the Automash Potato Dispenser system, and sales personnel training resulting in \$8,000,000 sales per year. Developed specialty blend mashed products and food service casseroles for major chain accounts resulting in \$50,000,000 sales. Developed wet and dry system blends such as mustard, ketchup, spaghetti, barbecue, and specialty sauces.

EDUCATION

Cornell University, Ithaca, New York
The College of Food and Dairy Science

Bachelor of Science Degree, June 1970
(Food and Dairy Science)

REFERENCES FURNISHED UPON REQUEST